* THE HON'BLE SRI JUSTICE P.S NARAYANA

+W.P.No.21639 of 2006

% 30/10/2006

Mada Venkata Mutyala Rao .. Petitioner

Vs.

$ The Government of A.P.,
rep. by its Principal Secretary,
Municipal Administration and others. .. Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioners : Sri K.Chidambaram

^ Counsel for respondents : Government Pleader for Municipal Admn.
and Urban Development.
Mr.B.Venkata Ratnam.
Mr.Venugopal.

?CASES REFERRED :

[1] (2004) 5 SCC 409

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

W.P.No.21639 of 2006
Dated: 30-10-2006

Between:
Mada Venkata Mutyala Rao Petitioner

And
The Government of A.P. rep. by its Principal Secretary,
Municipal Administration ,Secretariat, Hyderabad and others.

Respondents

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

W.P.No.21639 of 2006

ORDER:

1. The matter is appearing under interlocutory. Counter affidavit filed by Respondent No.3. At the request of counsel on record, the writ petition is being disposed of finally.

2. The writ petition is filed for a Writ of Mandamus declaring the action of the respondents 2 and 3 in not incorporating the questionnaire submitted by the petitioner as provided under Section 122 of the Hyderabad Municipal Corporation Act, 1955 (hereinafter be referred to as "the Act" for the purpose of convenience) in the agenda of the meeting scheduled to be held on 19-10-2006 as illegal, arbitrary, contrary to the provisions of the Act and consequently direct the respondents 2 and 3 to incorporate

the questionnaire submitted by the co-opted members as provided under Section 122 of the Act in the agenda of the meetings and pass such other suitable orders.

3. Sri Chidambaram, learned counsel representing the writ petitioner had taken this court through the averments made in the affidavit filed in support of the writ petition and would submit that in the facts and circumstances of the case, the stand taken by the 3rd respondent cannot be believed at all since the said stand appears to be an after-thought. The learned counsel also would submit that in the light of the relevant provisions of Section 5 and Section 122 of the Act and also the Municipal Corporation of Hyderabad (Regulation Of Proceedings And Conduct Of Business Of The Corporation And The Standing Committee) Bye-Laws,1966 (in short hereinafter be referred to as "the Bye Laws" for the purpose of convenience), Bye-Laws 43 and 44, it is clear that this questionnaire on perusal cannot be said to be prohibited questionnaire and inasmuch as the petitioner also can raise such questionnaire as a co-opted member by virtue of Section 122 of the Act, the writ petition may have to be allowed.

4. Sri B.Adinarayana Rao the learned counsel representing the 3rd respondent, on the contrary would contend that on a prima facie reading of the questionnaire, it is clear that this questionnaire is irrelevant and even otherwise, the 3rd respondent had disallowed this questionnaire and hence when the 3rd respondent already disallowed this questionnaire, the question of incorporating such questionnaire in the agenda would not arise at all. The learned counsel also had drawn the attention of this court to Section 5 (1) (1B) of the Act and Section 122 of the Act and Bye-Laws 43 and 44 of the Bye Laws referred to supra and would contend that in the facts and circumstances of the case and also in the light of the nature of the questionnaire , the writ petition cannot be allowed. The learned counsel also explained the distinction to be drawn between the elected member and the co-opted member and placed strong reliance on the decision of the Apex Court in **Ramesh Mehta Vs. Sanwal Chand Singhvi and others**[1].

5. The writ petitioner, it is averred in the affidavit filed in support of the writ petition, had completed Post Graduation in Law and he was elected as Corporator of 50th division of the Guntur Municipal Corporation and acted as such during the period from March,2000 to March,2005 and he had been discharging his duties as such with the complete satisfaction of one and all. It is stated that taking into consideration of his special knowledge and experience in Municipal Administration, the petitioner was co-opted by the Municipal Corporation of Guntur by voice vote in accordance with the rules as framed in G.O.Ms.No.145 dated 18-3-1995 and 20-04-2006 for the present term i.e. from April,2006 to March,2010 and the petitioner had assumed the charge as co-opted member and has been continuing as such. It is further averred that in pursuance of the notice of meeting of committee on 25-08-2006, the petitioner submitted questionnaire by raising 3 questions in the public interest and requested the respondents 2 and 3 to incorporate the said questionnaire in the agenda of the ensuing meeting of the Guntur Municipal Corporation scheduled to be held on 7.9.2006. The office of the respondents 2 and 3 had received the questionnaire on 25-08-2006. It is also stated that the petitioner reliably understood that the other co-opted members also had submitted their questionnaire. The 4th respondent had circulated the agenda on 30-08-2006 duly informing that the meeting of the Municipal Corporation will be held on 7-9-2006 at 11.00 A.M. and to his utter surprise, the questionnaire submitted by the petitioner and the other co-opted members were not there in the agenda and however the questionnaire submitted by the elected Corporators were incorporated in the said agenda. It is further stated that the meeting could not be held on 7.9.2006 as scheduled on account of operation

of the election code for conducting bye election to the 3rd division on 27-9-2006 and the meeting was postponed. It was further averred that the 4th respondent once again circulated the agenda of the meeting on 12-10-2006 (dated 11-10-2006) informing that the meeting dated 7.9.2006 which was adjourned due to election code, would be held on 19-10-2006 and they have not incorporated the questionnaire submitted in the said agenda , therefore, the petitioner had personally approached respondents 2 and 3 and questioned them, why the questionnaire submitted by him had not been incorporated in the agenda of the meeting for which, the 3rd respondent stated that he had verified from the Mayor of Hyderabad Municipal Corporation and he informed that the co-opted member has no right to submit the questionnaire and the Act also does not provide such right on the co-opted member and he will not allow the co-opted members to submit questionnaire and it cannot be incorporated in the agenda. It is also averred that the press also questioned the mayor about the same and he gave the same reply to the press people, which is evident from the news items published in the local news papers. It is further stated that having aggrieved by the said action, the petitioner requested the respondents 2 and 3 by way of letter dated 13-10-2006 to apprise the petitioner under what provision of Law, the co-opted member disentitled to submit that the questionnaire, though the same had been received by them on 13-10-2006 the petitioner did not hear anything from them for the reason best known to them. Specific stand taken that as per Section 5(1)(1B) of the Act, the Corporation co-opt the members, who shall be "Ex-Officio" members and they shall have the right to speak in and to take part in the meetings of the corporation but they shall not have right to vote. As per Section 122 of the Act, a member may question the commissioner who shall answer any question concerning with the Administration of the said Act, provided the said questions have to be given in not less than 7 clear days notice in writing specifying the questions. It is further stated that as per explanation to Section 122 of the Act, the member shall include an ex-office member. Thus in such circumstances non-inclusion of the questionnaire cannot be sustained. It is also stated that the Municipal Corporation is going to hold meeting on 19-10-2006 without incorporating the questionnaire submitted by the petitioner. It is further stated that the meeting ultimately is scheduled to be held as on today.

6. In the counter affidavit filed by the third respondent, the Mayor of Guntur Municipal Corporation, it is stated that the petitioner was co-opted as a member of the Corporation as per sub-section (1-B) of Section 5 of the Act. It is also stated that the persons having special knowledge or experience in municipal administration shall be co-opted as members of the Corporation in the prescribed manner by the members of the Corporation from amongst the persons who are registered voters in the corporation, provided, the members co-opted under this sub-section shall have the right to speak in and otherwise shall take part in the meetings of the corporation but shall not have right to vote. Article 243-R(2)(a)(i) of the Constitution of India allows the Legislature of a State to appoint any person as a member of the board who has special knowledge in the field of municipal administration, however, the proviso appended thereto precludes the persons nominated under sub-clause (i) from having a right to vote in the meetings of the municipality. The constitution therefore, makes a distinction between elected members and the nominated members, who play essentially an advisory role. As per sub-Sections (2) (3) & (4) of Section122 of the Act, Mayor shall disallow any question which in his opinion is in contravention of the provisions of sub-Section (1) and if any doubt arises whether any question is or is not within the restrictions imposed by sub section(1), the mayor shall decide the point and his decision

shall be final. As per Bye-laws 42, 43 and 44, it is clear that the Municipal Secretary shall prepare a list of all questions of which due notice has been given to and which had not been disallowed by the presiding authority. As per Bye-law 44, the Presiding authority shall disallow any question which is of excessive length or exceeds fifty (50) words; containing any argument, inference, imputation, epithet or ironical expression; and which is libelous, offensive or otherwise objectionable.

7. It was further stated in Para 4 of the counter affidavit that as per Section 122(1) (b) of the Act, no question shall be asked which relates to the character or conduct of any Municipal Officer or servant except in his official or public capacity; and which is or by implication may be, defamatory or of which makes or implies a charge of a personal character against any person or section of any community. Therefore, the Mayor has got absolute power to disallow any question, which is in his opinion is in contravention of the provisions of the Act and shall decide the point and his decision shall be final.

8. Further specific stand was taken at Para 5 of the counter affidavit that three lengthy questions which exceeded fifty words, which are not permissible as per the Bye-laws had been furnished and even otherwise, the said allegations are making imputations against the officers and the said questions were disallowed as such the same were not included in the agenda. It is also stated that the petitioner is a co-opted member and instead of playing an advisory role, circulated the questionnaire, which is not in accordance with the provisions of the Act and the Bye-laws made thereunder as such the said questions were disallowed. Further a specific stand was taken that the Mayor has got absolute power to allow or disallow the questions. Therefore, the same cannot be questioned in a writ petition and this court as a writ court would decline to examine as to whether the Mayor can allow or disallow the said questions. It was also stated specifically that the persons who are having special knowledge in the filed of Municipal Administration, were co-opted as members and instead of advising the corporation, the petitioner is interested in mudslinging and acting against the spirit of co-option.

9. The questionnaire in controversy which had been furnished in Telugu and the translated version furnished in this regard reads as here under:

> ***"QUESTIONS: (1) It is came to light that Sri A.Venkateswara Rao and Peer Ahmed, who joined as Assistant Engineers recently in the Engineering Section of the Municipal Corporation and there are certain allegations about misappropriation against them. The vigilance department has been conducting investigation against them for misappropriation of the funds of the Municipal Corporation. It is true or not. Is any provision to re-instate them into service on the basis of the joining report given by ENL. Whether the committed has any transparency or not in this regard, please answer.***
>
> ***QUESTIONS:(2) The Public Health Department of the Municipal Corporation has invited tenders of Sanitation Works and Scavengers for the year 2006-2008 and issued works orders for the tenderors who participated in the tenders. Let me know the Quoted price of the each tenders for each work. Whether the Quoted excess or less than the amount fixed. I further request you to furnish the details on what basis the work order were issued and the tender were rejected and also furnish all the details with regard to the above stated 20 packages.***
>
> ***QUESTIONS: (3) How many tractors are being used in the Public Health Department of the Municipal Corporation and furnish those details. Furnish the particulars of the tenders for tractors per year 2006-07. I request you to place before the meeting about the R.T.A. details of the tractor and also names of the tenderors."***

10. Section 5 of the Act deals with the constitution of corporation and Section 5 (1)(1B) of the Act specifies that in addition to the members referred to in sub- sections (1) and (1A) five persons of whom two shall be women having special knowledge or experience in Municipal Administration co-opted by the Corporation shall be ex-officio members.

Provided that the ex-officio members co-opted under this sub-section shall have the right to speak in and otherwise to take part in the meetings of the Corporation but shall not have the right to

vote.

11. Section 122 of the Act deals with right to ask questions and make proposals which reads as hereunder:

"(1) Subject to any bye-law made in this behalf under Section 586, a member may question the Commissioner who shall answer any question concerning or connected with the administration of this Act or the Municipal Government of the city:

Provided that-

(a) not less than seven clear days notice in writing specifying the questions has been given to the Municipal Secretary;

(b) no question shall be asked-

(i) which calls for an expression of the opinion or for the solution of an abstract legal question or of a hypothetical proposition; or

(ii) which concerns or is connected with, either directly or indirectly, any pending suit or proceedings, in any Court of Law or before any Tribunal in any part of the city: or

(iii) Which relates to the character or conduct of any Municipal Officer or servant except in his official or public capacity; or

(iv) which is or by implication may be, defamatory of or which makes or implies, a charge of a personal character against any person or section of any community; or

(v) which contravenes any bye-law made in this behalf under Section 586.

(2) The Mayor shall disallow any question which is, in his opinion, in contravention of the provisions of sub-section (1).

(3) If any doubt arises whether any question is or is not within the restrictions imposed by sub-section (1), the Mayor shall decide the point and his decision shall be final.

(4) The Commissioner shall not be bound to answer a question, if in his opinion, it cannot be answered without detriment to the interests of the Corporation or if it asks for information which has been communicated to him in confidence.

(5) Any (Member) may call the attention of the Commissioner to any neglect in the execution of the Municipal work, to any waste or damage to the Municipal property or to the wants of any locality and may suggest in respect thereof any proposal or improvement which he considers desirable."

12. Certain submissions were made relating to Section 122 (1) (b) of the Act which specifies that no question shall be asked which relates to the character or conduct of any Municipal Officer or servant except in his official or public capacity. Certain submissions were made in relation to the explanation in sub Section 5 of Section 122 of the Act which specifies that " for the purpose of this section, the expression member shall include an ex-officio member. Likewise reference was made to Bye laws 43 and 44 too.

13. Bye law 43 of the Bye Laws referred to supra reads as hereunder:

"(1)The Municipal Secretary shall prepare a list of all questions of which due notice has been given and which had not been disallowed by the presiding authority or under the powers vested under sub-sections (2) and (3) of Section 122 of the Act under these bye-laws in the order in which they are received and forward the same to the Commissioner for being answered, and placed before the meeting half-and-hour earlier.

(2)The presiding authority shall call out the name of each questioner in the order in which the names are printed. If the member against whom the question is printed, is present at the meeting both the question and answers shall be deemed to have been read.

(3)If a Councillor who has given a notice to ask a question is not present when he is called upon by the presiding authority, the question shall be considered as dropped."

14. Bye-Law 44 of the Bye Laws referred to supra reads as hereunder:

"(1) The presiding authority shall disallow any question-

(i) which is excessive length or exceeds fifty words;

(ii) containing any argument, inference, imputation, epithet or ironical expression;

(iii) relating to any debate that has occurred or answered that has been given within the preceding three months;

(iv) which is libelous, offensive or otherwise objectionable;

(v) concerning any matter in which the Councillor asking such question has directly or indirectly by himself or by his partner, any share or interest or in which he is professionally interested on behalf of the client, principal or other person;

(vi) which contains a statement for the accuracy of which the member asking it is not prepared to accept the responsibility;
(vii) enquiring whether a statement appearing in any newspaper is true;
(viii) the answer to which is available by reference to the printed proceedings of the Corporation or its various Committees; and
(ix) which brings in any name or statement not strictly necessary to make the question intangible.
(2) If a question contains a statement, the Councillor asking it must make himself responsible for the accuracy of the statement."

15. Certain submissions were made in relation to length of the questions on the strength of Bye Law 44 (1) which specifies that the presiding authority shall disallow any question (i) which is of excessive length or exceeds fifty words. The counsel representing the 3rd respondent placed strong reliance on the decision of the Apex Court in **Ramesh Mehta Vs. Sanwal Chand Singhvi and other (1 supra)** where under while dealing with Rajasthan Municipalities (Motion of No-confidence Motion against Chairman) Rules 1974 and the election and removal of Chairman in relation to the municipalities in the context of relevant provisions of the Constitution at Para 11, it was observed as hereunder:

> " ***In the present case, on facts, we are concerned with post-1994 position. Article 243-R brought about a drastic change in the matter of composition of Municipalities. It lays down guidelines with regard to the constitution, composition, election and rights of the members of a Municipality. Under the said Act, members of a Municipality are persons chosen by direct election by the residents of a municipal area (ward). Article 243-R(2)(a)(i) allows the legislature of a State to appoint any person as a member of the Board who has special knowledge in the field of municipal administration, however, the proviso appended to the said article precludes persons nominated under sub-clause (i) from having a right to vote in the meetings of the Municipality. The Constitution, therefore, makes a distinction between elected members and nominated members who play essentially an advisory role. Pursuant to the Seventy-fourth Constitutional Amendment of 1994, Sections 9, 65 and 72 of the Act were amended. Prior to the amendment the co-opted members were at par with the elected members, however, after 1994 only elected members and members of the Legislative Assembly have a right to vote under Section 9 (1) of the Act. Under sub-Section (2) of Section 65, as amended, the Chairman has to be elected by "elected members of the Board". This change is very important. Prior to 1994, the Chairman was to be elected by the "members of the Board", which is the phrase used in the unamended Section 65(2), as the co-opted members had a right to vote. However, in 1994 , Section 65(2) of the Act was amended and the expression "members of the Board" in the old section is substituted by the expression "elected members of the Board". In fact, the expression "whole number of members" earlier appearing in Sections 65 and 72 of the Act has been deleted because in Section 65(2) it is expressly provided that the Chairman shall be elected only by elected members of the Board from amongst themselves. Therefore, the scheme of post-1994 Act is that the Chairman/Vice Chairman shall be elected by the elected members of the Board and their office shall stand vacated on passing of non-confidence motion by the elected members of the Board. The position which, therefore, emerges is that both before and after 1994, the no-confidence motion had to be voted upon by members who were entitled to vote. As stated above, Section 3 of the Act begins with the words "unless the context otherwise requires " Section 3 (36) defines the expression "whole number"/ " total number" to mean total number of members holding the office at the given time. The said expression "whole number of members" finds place in Rules 3 (5), (8) and (9). Hence, we have to read Rules 3 (5), (8) and (9) in the context of the provisions of the said Act. As stated above, the basic scheme of the Act prior to 1994 and post-1994 has remained unchanged. In both cases, the legislative intent has been that the office of the Chairman/Vice Chairman shall stand vacated on passing of no-confidence motion by the members of the Board who are entitled to vote. Hence, in our view, the expression " whole number" or " total number" connotes the " total number of elected members".***

16. Certain submissions were made relating to the distinction to be made between elected members and nominated members and it was contended that the nominated members are expected to play essentially an advisory role.

17. In the light of this specific stand taken by the writ petitioner, in Paras 4 ,5 and 6 of the affidavit filed in support of the writ petition and also in the light of the counter affidavit filed by respondent No.3, this court is of the considered opinion that in the light of the non-denial of certain specific averments made by the petitioner and the present stand being taken by the third respondent in the counter affidavit stating that these questions were already disallowed by the third respondent and hence they were not

included in the agenda, prima facie appears to be unsustainable.

18. Be that as it may, this court is not inclined to express any further opinion relating to the other objections which had been raised in this regard. However to lay down a broad proposition, that whenever questions are disallowed such action cannot be questioned at all and the same is not amenable to judicial review in the considered opinion of this court cannot be a sustainable stand. It is no doubt true that the role to be played by co-opted members may be advisory. It is no doubt true that certain conditions had been specified in relation to either allowing or disallowing the questionnaire, but at the same time the concerned are expected to apply the mind while either allowing or disallowing the questions. The trend of disallowing essential, important questions, but, may be inconvenient for certain reasons, in a way would affect the healthy functioning of democratic institutions inclusive of local bodies. Liberty of putting questions also cannot be stretched too far and frivolous, vexatious irrelevant questions if to be allowed, it would be wasting the valuable time at the meetings. If otherwise questions exceed the words, or to be disallowed on other grounds, members to suitably modify the questions within permissible limits. Healthy democratic principles are to be protected always. Disallowing questions only with a view to suppress the dissent voice and for no other reason not to be permitted. Without expressing any further opinion relating to the other aspects inasmuch as it is stated that the meeting is scheduled to be held as on today, this court is of the considered opinion that the impugned action of disallowing questionnaire to be set-aside and the matter to be sent back to the 3rd respondent to reconsider the questionnaire in the light of the respective stands taken by the parties before this court and pass appropriate orders in this regard within a period of two weeks from the date of receipt of this order.

19. With the above directions, the writ petition is disposed of. No order as to costs.

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P.S. NARAYANA,J

Note:

L.R. copy to be marked.

30-10-2006

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[1] (2004) 5 SCC 409